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FACSIMILE COVER LETTER

To: Jennifer A. Leung
Firm: PTO
Facsimile: 703 872-9306
From: Christian M. Smolizza
Date: September 8, 2004
Re: U.S. Patent Application
Serial No. 09/751,512
Our Ref. No. 120301-2382A

Number of Pages: 4
(including cover page)

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**RECEIVED
CENTRAL FAX CENTER**SEP 08 2004 PATENT
120301-2382A**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Espeillac et al.
Serial No. : 09/751,512
Filed : December 29, 2000
Title : PROCESS FOR HYDROTREATING A
HYDROCARBON FEEDSTOCK AND APPARATUS
FOR CARRYING OUT SAME
Group Art Unit : 1764
Examiner : Jennifer A Leung

745 Fifth Avenue
New York, NY 10151**EXPEDITED PROCEDURE**
RESPONSE AFTER FINAL ACTION**FACSIMILE**

I hereby certify that this paper is being facsimile transmitted to
the Patent and Trademark Office on the date shown below.

CHRISTIAN SMOLITZ Pa. No. 46319
Name of person signing certification
Jennifer A Leung
Signature

September 8, 2004

Date of Signature

COMMUNICATION MAKING OF RECORD
TELEPHONIC DISCUSSION WITH SPE

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This Communication is in response to the July 16, 2004 Advisory Action and to make of
record a telephone discussion with SPE Glenn Caldarola.

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REMARKS

This is to make of record the telephone discussion with SPE Glenn Caldarola on July 28, 2004.

SPE Glenn Caldarola is thanked for reviewing the prosecution of this application. Specifically, claims 11, 12 and 15-20 were rejected under 35 U.S.C. 102(e) as being allegedly anticipated by U.S. Patent No. 5,720,872 to Gupta. ("Gupta"). In addition, claim 13 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy et al. (US Patent No. 3,314,879). Further, claims 14 and 21 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy, further in view of Egloff (US Patent No. 1,707,349).

As shown by previous submission, the present application claims priority to French Patent Application No. 96/16290, filed on December 31, 1996; and, the present invention has a December 31, 1996 effective filing date.

From the July 28, 2004 discussion, it is believed that SPE Glenn Caldarola's view is that Gupta is not available against the present application because the effective filing date of the instant application antedates the effective filing date of Gupta. Further, it is believed that SPE Glenn Caldarola's view is that "antedate" means "on or before".

Specifically, under MPEP 706.02(b) a rejection based on 35 U.S.C. 102(e) can be overcome by: . . .

(E) Perfecting a claim to priority under 35 U.S.C. 119 (a)-(d) within the time period set in 37 CFR 1.55(a)(1) . . . The foreign priority filing date must antedate the reference and be perfected . . .

(Advisory Action at 3).

The instant application has an effective filing date of December 31, 1996. In addition, Gupta has an effective filing date of December 31, 1996. Because the instant invention's effective filing date falls on the same date as Gupta's effective filing date, the instant application antedates Gupta. Thus, Gupta is not available against the instant application.

Accordingly, reconsideration and withdrawal of the art rejections under 35 U.S.C. §§ 102(e) and 103 as to Gupta are respectfully requested.

SPE Glenn Caldarola is again thanked for the courtesies extended during the telephonic discussion.

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CONCLUSION

The remarks herein place the application in condition for allowance. Consideration and entry of this paper and early and favorable reconsideration of the application, and prompt issuance of a Notice of Allowance, are earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorney for Applicants

By: 

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